

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NO. OF 2011

IN

O.S. NO. 3 OF 2006

In the matter of:

State of Tamil Nadu ... Applicant

Versus

State of Kerala & Another ... Respondents

**AN APPLICATION FOR DIRECTIONS ON BEHALF OF PLAINTIFF
STATE OF TAMIL NADU**

To

The Hon'ble Chief Justice of India and His Companion Justices of the Supreme Court of India

The Application of the Applicant above named

MOST RESPECTFULLY SHOWETH:

1. The Applicant State filed the above Suit seeking *inter alia* for declaring that the impugned Amendment Act of 2006 passed by the Kerala State Legislature be declared *ultra vires* in its application to the Mullai Periyar Dam covered by the Inter State Agreement of 1886 and for permitting the State of Tamil Nadu to raise the water level of the Dam in accordance with the Judgment dated 27.02.2006 passed by this Hon'ble Court in Writ Petition and a batch of transferred cases reported in 2006 (3) SCC 643.

2. This Hon'ble Court framed issues by its order dated 13.12.2007 which *inter alia* included issue No. 9 which reads as under:

“Whether the offer of the State of Kerala to construct a new Dam across River Periyar in the downstream region of Mullai Periyar Dam would meet the ends of justice and requirements of State of Tamil Nadu.”

It is the case of the Applicant State that the Mullai Periyar Dam has been fully strengthened and is as good as a new Dam. The report of the Expert Committee appointed by the Ministry of Water Resources in its report of March, 2001 has *inter alia* held that the Mulla Periyar Dam is safe and the water level could be raised initially to 142 ft and thereafter to 152 ft. after completion of the remaining strengthening works to the Baby Dam and raising the Parapet wall of the Main Dam in the remaining length of 65 ft. out of 1200 ft.

3. It is stated that apart from a bald offer made in the Written statement and the Affidavits of DW-5 and DW-2 regarding the proposal of a new Dam, the State of Kerala has not been able to substantiate its case for a new Dam by any evidence and in any event, did not lead any evidence with regard to the feasibility or otherwise of a new Dam. The State of Kerala did not come up with the idea of a new dam at any point of time earlier. The offer of a new Dam

by the State of Kerala has been made based on its unjustified stand that Mullai Periyar Dam is unsafe. Hence, the Mullai Periyar Dam having been found to be safe by the judgment reported in 2006 (3) SCC 643, and in the event of the present suit being decreed, there would be no necessity of the new Dam.

4. This Hon'ble Court by its order dated 10.11.2009, while referring the matter to be placed before the Constitution Bench, directed the party States to maintain status quo in respect of Mullai Periyar Dam as existing on the said date. A copy of the order dated 10.11.2009 passed by this Hon'ble Court is annexed herewith and marked as **Annexure – I**

5. It is stated that the issue concerning the safety of the dam is included in Issue No. 4 (b) framed by this Hon'ble Court by its order dated 13.12.2007 which reads as under: -

(b) Whether the pleas relating to validity and binding nature of the deed dated 29.10.1886, the nature of Periyar River, structural safety of Mullai Periyar Dam etc. raised by the first defendant in its defence, are finally decided by the judgment of this Court dated 27.02.2006 in WP(C) No.386/2001, and consequently first defendant is barred from raising or reagitating those issues and pleas in this suit, by the principle of res judicata and constructive res judicata?

Further, the order of this Hon'ble Court dated 18.02.2010 directing the Central Government to constitute an Empowered Committee and call for its report also records the following: -

The concern of the State of Kerala, on the other hand, appears to be relating to the safety of the Dam.

Kerala had submitted, amongst other things, that there are genuine concerns as to the safety of Mullai Periyar Dam, and that they have also offered to build a new Dam at their cost which will ensure that there is no fall in the water draws of the State of Tamil Nadu, and that their law is valid

It is therefore submitted that only if this Hon'ble Court finds that the dam is unsafe, the question of considering the State of Kerala's offer of a new dam would arise. A copy of the order dated 18.02.2010 passed by the Constitution Bench of this Hon'ble Court is annexed herewith and marked as **Annexure – II**.

6. It is submitted that the issue of the safety of the dam has been finally decided by the judgment of this Hon'ble Court reported in 2006(3) SCC 643.

Notwithstanding the same and in view of the concerns raised by State of Kerala, the safety of the existing dam is being looked into by the Empowered Committee constituted by this Hon'ble Court whose report will receive due consideration of this Hon'ble Court.

7. It is stated that pursuant to the above order, the Empowered Committee was constituted which directed the party States to file memorandum, responses and

submissions on issues framed by it and also certain additional issues raised by the State of Kerala. The Empowered Committee through a Technical Committee formed by it, had conducted several studies and tests and are conducting some more tests on the dam for determining its safety and the results would be forwarded to this Hon'ble Court along with the report of the Empowered Committee. It held several meetings and the party States addressed oral submissions followed by Written Submissions on 18.02.2011 and 31.08.2011 respectively. The State of Kerala also filed feasibility report (FR) and a detailed project report (DPR) in regard to their offer of the new dam. The Applicant State of Tamil Nadu filed its objections to the Feasibility Report and the DPR before the Empowered Committee stating *inter alia* that there are several deficiencies in the report and that the DPR filed by the State of Kerala is liable to be eschewed as it is not a bona fide which would be evident from the following:

- a. The attempt of the State of Kerala in filing the present DPR is not a bona fide action actuated by any genuine concern with regard to the safety of the existing dam, but an attempt to deprive the State of Tamil Nadu of the right to the waters of the Mulla Periyar Dam under the 1886 Agreement, as ratified by the supplemental Agreements of 1970.
- b. The DPR seeks to restrict the Full Reservoir Level (FRL) to + 136 ft., thereby defeating the rights of the State of Tamil Nadu to water up to the contour line of + 155 ft., guaranteed under the Agreement of 1886 as ratified by the supplemental Agreements of 1970.
- c. The DPR seeks to claim 1.1 TMC of waters on account of purported environmental flows, which the State of Kerala is not entitled to
- d. The DPR filed by the State of Kerala is an incomplete technical exercise replete with contradictions, warranting its rejection.
- e. The DPR for the new dam proposed by the State of Kerala suffers from lack of complete investigations. The State of Kerala has filed an incomplete report which ought to be rejected by the Empowered Committee.

In view of the above, it was submitted that the DPR filed by the State of Kerala cannot form the basis for grounding a new dam and such an incomplete DPR shows the lack of bona fide of the State of Kerala.

8. The applicant State of Tamil Nadu filed an application being I.A. No. 14 of 2011 before this Hon'ble Court praying *inter alia* for restraining the State of Kerala from taking any steps in regard to the construction of the new dam. In

the said application, the pleadings are complete and the same is pending consideration of this Hon'ble Court.

9. It is submitted that the proposal for a new Dam is an offer made by the State of Kerala. The Empowered Committee appointed by this Hon'ble Court is examining this offer and thereafter the same will be examined by this Hon'ble Court. The said offer is obviously made on the basis of Kerala's untenable stand that the existing Mullai Periyar Dam is unsafe. Therefore, the question of safety of the Mullai Periyar Dam, which has been concluded by the judgment of the Hon'ble Court reported in 2006 (3) SCC 643, is inextricably linked with the offer of the new Dam.

10. It is stated that the State of Kerala and its officials are repeatedly going to the press and are engaging in parallel media trial. In view of the fact that this Hon'ble Court is seized of the entire matter including the safety of the existing dam, it is most inappropriate for the State of Kerala through its Chief Minister and others to make strongly worded statements to the effect that the a new dam is the only solution. It is submitted that when the matter is sub judice, such statements ought not to be made. If this Hon'ble Court finds the existing dam to be safe, there would be no need for a new Dam.

11. It is reported in 'The Hindu' dated 20.11.2011 that statements are being issued by the officials and the Minister of the State of Kerala that as many as 22 mild tremors have occurred in parts of Idukki and adjacent Kottayam districts and that two minor cracks have been believed to have been caused by the latest tremor and that State of Kerala wants to decommission the old dam and build a new dam. Copies of the news item 'The Hindu' and 'Times of India' are annexed as **Annexure – III (Colly)**.

12. It is stated that during the past fortnight several news items reporting 22 tremors in the last 4 months has resulted in a fear psychosis amongst the people living down stream. The reported tremors are negligible and in any event were below 3.5 in the Richter Scale. The false propoganda of 22 tremors in the last 4 months resulting in the dam being unsafe is being made without any basis. In fact there have been only four tremors in the current year and in fact such tremors have been occurring over many years. A statement was filed along with affidavit of DW-5 showing an occurrence of earthquake around Mulla Periyar Dam for the period 1819 to 2005. There have been 76 instances of tremor in a span of 186 years. Based on the said statement filed, an exhibit B-28 was tendered during cross examination showing the reported tremors over 11 years by the Indian Meteorological Department (IMD), when it was pointed out that the location of the tremor was away from the dam. The copies of the statement filed alongwith affidavit of DW-5 and Ex. B-28 tendered during the evidence are annexed as **Annexure – IV (Colly)**.

13. The incidents of tremor recorded by the IMD during the current year are as under:

**PRELIMINARY LOCATIONS OF EARTHQUAKES
DURING THE YEAR 2011 (UPTO 29.11.2011),
IN MULLA PERIYAR REGION**

Date	Time (UTC)	LAT (deg. N)	LONG (deg. E)	Depth (km)	Magnitude	Region
26.07.2011	07:39:17	09.6 ⁰ N	76.6 ⁰ E	15	3.5	Kottayam – Idukki Dist. Border Region, Kerala
26.07.2011	08:45:56	09.7 ⁰ N	76.8 ⁰ E	15	3.2	Kottayam – Idukki Dist. Border Region, Kerala
18.11.2011	00:15:35	09.8 ⁰ N	77.1 ⁰ E	5	3.1	Idukki, Kerala
25.11.2011	21:44:59	9.7 ⁰ N	76.9 ⁰ E	10	3.2	Idukki, Kerala

The reported tremors have a magnitude of below 3.5 and in any event are away from the existing dam. There are no cracks in the dam as alleged and the fear psychosis created is absolutely baseless.

14. It is stated that it is the specific case of the applicant State of Tamil Nadu that the retrofitted Mulla Periyar Dam falling in Zone – III has been designed to withstand the earthquakes as per IS Code. The reported tremors did not have even an iota of impact on the dam. In fact, the tremors were not even felt in the vicinity of the dam. The dam is fully strengthened and safe and has developed no cracks as claimed by the State of Kerala. The alleged tremors did not have any impact on the Mullai Periyar Dam, which is fully safe.

15. It is stated that the Chief Minister of State of Kerala and other Minister and its officials are repeatedly going to the press and making various press statements. Some of the news statements are as under: -

a. the Chief Minister of State of Kerala has reported to have stated in a news report appearing on 22.11.2011 in ‘The Asian Age’ that “Kerala’s stand is very clear. We want a new dam in Mullaperiyar. We want to ensure the safety of our people,” Chandy told reporters after meeting the Prime Minister.

He said the delegation informed the Prime Minister about the leakage in the dam following a tremor on Saturday.

A copy of the news item dated 22.11.2011 in ‘The Asian Age’ is annexed as **Annexure – V**.

b) news item appeared in the ‘Indian Express’ dated 24.11.2011, where the Chief Minister of the State of Kerala is reported to have stated as under:

“We are ready to bear the full cost for construction of the new dam as safety of the people is our main concern”, he told reporters after a Cabinet meeting.

Chandy assured Tamil Nadu that they would be given the same quantity of water which they had been getting over the years even after a new dam was built.

Joseph said the safety of 30 lakh people living in downstream districts of central Kerala was at stake following minor tremors in Idukki district where the dam is located”

A copy of the news item dated 24.11.2011 in ‘The Indian Express’ is annexed as **Annexure – VI.**

c) news item appeared in ‘Deccan Chronicle’, dated 29.11.2011 wherein it has been reported that the Ministers of State of Kerala have obtained a legal opinion *inter alia* to adopt a resolution in the Assembly requesting Parliament to enact a law to set up a new dam if there was immediate threat of 100 years old existing structure collapsing. It has also been reported that “ Finance Minister K.M. Mani said the State had the right to initiate action to build a dam on its soil without nod from other states. A copy of the news item dated 29.11.2011 in ‘Deccan Chronicle’ is annexed as **Annexure – VII.**

Pursuant to the above news item, it is reported in the media that a special session of the State Assembly of Kerala was likely to be convened in the 1st week of December 2011.

16. It is submitted that this Hon’ble Court by its order dated 10.11.2009 directed the party states to maintain status quo in respect of Mullai Periyar Dam as existing on that date. The recent statements made by the responsible officials and Minister of the State Government show scant respect for this Hon’ble Court’s order and amount to interference with the course of justice when the issue of dam safety and new dam are pending before this Hon’ble Court. The frequent press statements made by the officials and the protests organised in the State of Kerala are all being done to create a fear psychosis amongst the people to the effect that the existing dam is unsafe which is wholly untenable and factually baseless, contrary to the scientific evidence available on record and the judgment of this Hon’ble Court. The present dam is fully strengthened and retrofitted and it is as good as a new dam.

17. It is stated that the statement made by the Chief Minister and Ministers of the State of Kerala in indulging in false propaganda in support of decommissioning the existing dam and constructing a new dam clearly amounts to interfering with the due course of law and / or obstructing with the administration of justice. The conduct and action of the State of Kerala amounts to overreaching this Hon’ble Court and preempt adjudication of issues in the Suit by thrusting a *fait accomplie*. It is submitted that making press statements and creating unwarranted public opinion and fear psychosis on issues which are pending in this Hon’ble Court and holding a virtual media trial is calculated to prevent adjudication of the issues in a proper atmosphere which

is the essence of judicial process. It is further submitted that public interest lies in not creating a baseless fear psychosis amongst the inhabitants of State of Kerala but in awaiting adjudication by this Hon'ble Court.

18. The applicant State of Tamil Nadu is therefore compelled to file the present application in view of the subsequent developments that have occurred during the past 15 days. The present application is made bonafide and in the interests of justice and for preserving the rule of law.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- i. Direct the State of Kerala and its officials to desist from making press statements particularly of the kind referred to in Annexures III to VI and from making other/further statements with regard to the decommissioning of the existing dam and the construction of a new dam pending disposal of the suit having regard to the public interest and the interests of justice; and
- ii. Pass any further order or orders as this Hon'ble Court may deem just and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY.

Drawn by: Shri. G. Umapathy,
Advocate.

Filed By

Settled by: Shri. Guru Krishnakumar
Addl. Advocate General.

(B. Balaji)

Advocate on Record

Resettled by: Shri. V.A. Bobde,
Senior Advocate.

Government of Tamil Nadu

Filed on: 01.12.2011

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AFFIDAVIT

I, Ram Dahin Singh, son of Shri. Rit Lal Singh aged 55 years, Liaison Officer, Cauvery Technical Cell cum Inter State Waters Wing, Water Resources Department, Government of Tamil Nadu, Tamil Nadu House, Kautilya Marg, Chanakyapuri, New Delhi-110 021, do hereby solemnly affirm and state as under: -

1. I am the Liaison Officer, Cauvery Technical Cell cum Inter State Waters Wing, Water Resources Department, Government of Tamil Nadu, Tamil Nadu House, Kautilya Marg, Chanakyapuri, New Delhi-110 021.

I am aware of the facts of the case and authorised to swear the present affidavit.

2. I have perused the averments made in the application for directions and state that the facts stated therein are true and correct and are based on records maintained by the State of Tamil Nadu. The legal submissions are based on the legal advice of the counsel which is believed to be true.

DEPONENT

VERIFICATION

Verified that the contents of the above are true and no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on 01.12.2011.

DEPONENT

IN THE SUPREME COURT OF INDIA

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Filed by

Filed on: 01.12.2011.

(B. Balaji)
Advocate on Record
Government of Tamil Nadu